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91-838

CASE # _____

Supreme Court, U.S.
FILED
SEP 4 1991
OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

Gregory T. Christian, Petitioner

v.

James B. Busey,

Federal Aviation Administration,

National Transportation Safety Board,

Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Petition for Writ of Certiorari

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Questions Presented for Review

1. Did the lower court err in not responding to motions made by the parties?

2. Did the lower court err in cancelling oral argument?

3. Did the lower court err in ruling that the Petitioner pay to the Respondents the costs on appeal?

4. Did the lower court err in not requiring that the FAA initiate related proceedings upon declaring an emergency?

5. Did the lower court err in not requiring that the FAA notify a party of the grounds for an action prior to taking that action?

6. Did the lower court err in not requiring that the FAA take immediate action in response to an emergency?

7. Did the lower court err in its conclusion that the certificate sanction imposed by the FAA was in accord with established precedent?

8. Did the lower court err in acquiescing upon the FAA's assertion that the Petitioner's aircraft was operated in air commerce?

9. Did the lower court err in acquiescing upon the FAA's assertion of unauthorized maintenance performed on an aircraft?

10. Did the lower court err in acquiescing upon the FAA's assertion of improper documentation of aircraft maintenance?

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STATEMENT OF JURISDICTION

Review is sought of a judgment rendered and entered on June 6, 1991 by the United States Court of Appeals for the Fifth Circuit. Jurisdiction of the Supreme Court to review the case is conferred by 49 USC 1486(f).

AUTHORITIES

FEDERAL STATUTES:

49 USC 1486(a): Orders subject to review; petition for review. Any order, affirmative or negative, issued by the Board or Administrator [Secretary of Transportation] under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act [49 USC Appx 1461] shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

49 USC 1486(f): Review by Supreme Court. The judgment and decree of the court affirming, modifying, or setting aside any such order of

the Board or Administrator [Secretary of Transportation] shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28, United States Code.

5 USC 706: Scope of review. To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall-

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawfull and set aside agency action, findings, and conclusions found to be-

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of

statutory right;

(D) without observance of procedure required by law;

(F) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

49 USC 1485(a): Orders, notices, and service; Effective date of orders; emergency orders.

Except as otherwise provided in this Act, all orders, rules, and regulations of the Board or the Administrator [Secretary of Transportation] shall take effect within such reasonable time as the board or Administrator [Secretary of Transportation] may prescribe, and shall continue in force until their

further order, rule, or regulation, or for a specified period of time, as shall be prescribed in the order, rule, or regulation: Provided, That whenever the Administrator [Secretary of Transportation] is of the opinion that an emergency requiring immediate action exists in respect of safety in air commerce, the Administrator [Secretary of Transportation] is authorized, either upon complaint or his own initiative without complaint, at once, if he so orders, without answer or other form of pleading by the interested person or persons, and with or without notice, hearing, or the making or filing of a report, to make such just and reasonable orders, rules, or regulations, as may be essential in the interest of safety in air commerce to meet such emergency: Provided further, That the Administrator [Secretary of Transportation] shall immediately initiate proceedings relating to the matters embraced in any such order, rule, or regulation, and shall, insofar as practicable, give preference to such proceedings over all others under this

Act.

49 USC 1429(a): Reinspection or reexamination; amendment, suspension, or revocation of certification - Procedure; notification; hearing; appeal to National Transportation Safety Board; judicial review. The Administrator [Secretary of Transportation] may, from time, reinspect any civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or may reexamine any civil airman. If, as result of any such reinspection or reexamination, or if, as a result of any other investigation made by the Administrator [Secretary of Transportation], he determines that safety in air commerce or air transportation and the public interest requires, the Administrator [Secretary of Transportation] may issue an order amending, modifying, suspending, or revoking, in whole or in part, any type certificate, air carrier operating certificate, air navigation facility certificate, (including airport operating certificate), or air agency certificate. Prior

to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator [Secretary of Transportation] shall advise the holder thereof as to any charges or other reasons relied upon by the Administrator [Secretary of Transportation] for his proposed action and, except in case of emergency, shall provide the holder of such a certificate an opportunity to answer any charges and be heard as to why such certificate should not be amended, modified, suspended, or revoked. Any person whose certificate is affected by such an order of the Administrator [Secretary of Transportation] under this section may appeal the Administrator's [Secretary of Transportation's] order to the Board [National Transportation Safety Board] and the Board [National Transportation Safety Board] may, after notice and hearing, amend, modify, or reverse the Administrator's [Secretary of Transportation's] order if it finds that safety in air commerce or air transportation and the public interest do not require

affirmation of the Administrator's [Secretary of Transportation's] order. In the conduct of its hearings the Board [National Transportation Safety Board] shall not be bound by findings of fact of the Administrator [Secretary of Transportation]. The filing of an appeal with the Board [National Transportation Safety Board] shall stay the effectiveness of the Administrator's [Secretary of Transportation's] order unless the Administrator [Secretary of Transportation] advises the Board [National Transportation Safety Board] that an emergency exists and safety in air commerce or air transportation requires the immediate effectiveness of his order, in which event the order shall remain effective and the Board shall finally dispose of the appeal within sixty days after being so advised by the Administrator [Secretary of Transportation]. The person substantially affected by the Board's [National Transportation Safety Board's] order may obtain judicial review of said order under the provisions of section

1006 [49 USC Appx 1486], and the Administrator [Secretary of Transportation] shall be made a party to such proceedings.

49 USC 1430(a)(2): Violations; It shall be unlawfull for any person to serve in any capacity as an airman in connection with any civil aircraft, aircraft engine, propeller or appliance used or intended for use, in air commerce without an airman certificate authorizing him to serve in such a capacity, or in violation of any term, condition, or limitation thereof, or in violation of any order, rule, or regulation issued under this title [49 USC Appx. 1421 et seq.].

<u>FEDERAL AVIATION REGULATIONS:</u>

FAR 43.3(a): Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations. Except as provided in this section and 43.17, no person may maintain, rebuild, alter, or perform preventive maintenance on an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which this

Part applies. Those items, the performance of which is a major alteration, a major repair, or preventive maintenance, are listed in Appendix A.

FAR 43 Appendix A(c): Preventive maintenance.

Preventive maintenance is limited to the following work, provided it does not involve complex assembly operations:

(9) Refinishing decorative coating of fuselage, balloon baskets, wings, tail group surfaces (excluding balanced control surfaces), fairings, cowlings, landing gear, cabin, or cockpit interior when removal or disassembly of any primary structure or operating system is not required.

(10) Applying preservative or protective material to components when no disassembly of any primary structure or operating system is involved and where such coating is not prohibited or is not contrary to good practices.

FAR 91.163(b): Maintenance, Preventive Maintenance, and Alterations; General.

No person may perform maintenance, preventive

maintenance, or alterations on an aircraft other than as prescribed in this subpart and other applicable regulations, including Part 43 of this chapter.

FAR 91.173(a): Maintenance Records. Except for work performed in accordance with 91.171, each registered owner or operator shall keep the following records for the periods specified in paragraph (b) of this section:

(1) Records of the maintenance, preventive maintenance, and alteration, and records of the 100-hour, annual, progressive, and other required or approved inspections, as appropriate, for each aircraft (including the airframe) and each engine, propeller, rotor, and appliance of an aircraft. The records must include-

(ii) The date of completion of the work performed.

STATEMENT OF THE CASE

On May 10, 1990, the FAA initiated an investigation of the Petitioner's operation of the Petitioner's aircraft. On July 6, the FAA issued an emergency order revoking the Petitioner's airman certificate and stating the Petitioner's guilt concerning operation of an aircraft not in an airworthy condition, performing unauthorized maintenance, failure to adequately document maintenance, and failure to have various checks and inspections performed (Case No.90SW090066).

The Petitioner contacted the NTSB and filed an appeal. The Petitioner admitted not having had various checks performed of his health, skill, and the airworthiness of his aircraft, and contested the remaining assertions. A hearing was held before the NTSB on July 31, after which the administrative law judge issued an order affirming the FAA order in its entirety. The Petitioner then filed a second appeal with the NTSB, which subsequently dismissed the FAA's assertion that the Petitioner operated his aircraft when

it was not in an airworthy condition but which otherwise affirmed the remaining assertions and the emergency order of revocation (NTSB Order No. EA-3193).

Pursuant to 49 USC 1486(a), the Petitioner then filed an appeal with the U.S. Court of Appeals for the 5th Circuit (Docket No. 90-4828), which subsequently affirmed the ruling of the NTSB without hearing or opinion.

ARGUMENTS FOR ALLOWANCE OF WRIT

1. The most significant reason for the Court to review this case is because it is in the public interest that pilots have the perception that should they have to deal with the FAA or the court system they will be treated fairly and in a manner consistent with the standards of due process guaranteed by law. The importance of such a perception lies in the influence it has upon the decision making process in which a pilot's decision to avail himself of FAA assistance during a potential emergency will inevitably be weighed to some extent against the risk of litigation or loss of livelihood.

2. The Court of Appeals appears to have departed substantially from the accepted and usual course of judicial proceedings by virtue of the following:

1) The court has not to the date of this writing responded to two motions, one made by the Petitioner and one made by the FAA. These motions concerned amendment of the Petitioner's and the Respondent's briefs.

2) After notifying the Petitioner of the date of oral argument and then advancing that date upon motion by the Petitioner, the court notified the Petitioner that oral argument would not be held.

3) In ruling that the Petitioner pay to the Respondents the costs on appeal, the court would in essence have the Petitioner pay the FAA and the NTSB for prosecuting him, despite the fact that the Court of Appeals was the only mechanism by which the case could have been independently reviewed outside of the Department of Transportation.

3. The Court of Appeals has departed from the accepted and usual course of judicial proceedings in that it failed to abide by the requirement of 5 USC 706(2)(D), which specifies that the reviewing court shall "hold unlawfull and set aside agency action, findings, and conclusions found to be without observance of procedure required by law." Alternately, the Court of Appeals has decided important questions of law which have not been, but should be, settled by the Supreme

Court. The Petitioner observes the following in support thereof:

1) The FAA did not initiate related proceedings upon declaring an emergency, but rather left responsibility to the Petitioner to initiate and pursue the matter with the NTSB. This assertion is uncontested by the FAA. 49 USC 1485(a), which the FAA cited as authority for its action, states that "the Administrator shall immediately initiate proceedings relating to the matters embraced in any such emergency order", and the FAA's failure to do so implies that in their opinion events which required declaration of an emergency somehow did not warrant the holding of a hearing afterward.

2) The FAA did not notify the Petitioner of the charges against him prior to revoking his airman certificate. This assertion is uncontested by the FAA. 49 USC 1429(a), which the FAA cited as authority for its action, states that "Prior to amending, modifying, suspending, or revoking any of the foregoing certificates, the Administrator shall advise

the holder thereof as to any charges or other reasons relied upon by the Administrator for his proposed action".

3) The FAA did not take immediate action in response to an emergency. This assertion is uncontested by the FAA. 49 USC 1485(a) specifies that the Administrator may only declare an emergency if he is "of the opinion that an emergency requiring immediate action exists". The Petitioner points out that the matter was pending for some two months before the FAA declared an emergency. ample time in which to hold a hearing in which the Petitioner would be afforded an opportunity to defend himself before his guilt was decided upon.

4. The Appeals Court failed to abide by the requirement of 5 USC 706(2)(A), which requires that the reviewing court shall "Hold unlawfull and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". Alternately, the Court of Appeals has decided important questions of

law which have not been, but should be, settled by the Supreme Court.

1) The severity of the sanction imposed by the FAA in this case departs substantially from established standards and precedent. Of the 108 violations listed in the FAA Compliance and Enforcement Handbook of 1988, the only violation for which a sanction of emergency revocation is recommended is operation of an aircraft while under the influence of drugs or alcohol. The FAA argued in its brief (p.24-25) that its emergency order of revocation "had nothing to do with whether the Petitioner cooperated with the FAA after the violations were discovered, with the Petitioner's actual physical health, with his technical ability to fly an aircraft, or with the aircraft's airworthiness", but was rather based upon the perception that the Petitioner had "such contempt for regulatory authority as to compel the conclusion that the Petitioner lacks the qualifications required of a certificate holder". Perceived contempt for regulatory authority is thus elevated in

importance to the level of alcohol and narcotic abuse in flight, and was in fact used as grounds for bypassing established and customary standards of due process. Indeed, the sanction imposed by the FAA in this case does not remotely compare with precedent established in the imposition of sanctions in other cases noted by the Petitioner and cited by the FAA.

2) The FAA maintains that the Petitioner violated 49 USC 1430(a)(2) because the Petitioner performed maintenance on an aircraft used in air commerce, an assertion which the Petitioner has denied on grounds that the aircraft was not used in air commerce. The FAA asserts that the Petitioner operated the aircraft in air commerce solely because the Petitioner operated the aircraft "in a manner which may have created the potential for endangering safety in interstate, overseas, or foreign air commerce." Prior to the Petitioner appealing to the court system, the Respondents had maintained that the Petitioner's aircraft was

operated in air commerce because it was flown within a federal airway (NTSB Order No. EA-3197), but as this was subsequently shown to be untrue, the Respondents have since opted for the currently preferred definition. However, the Petitioner was never charged with operating the aircraft in a careless or reckless manner, and the pilot logbook entries used by the FAA in support of its contention were never clearly established to be indicative of acts performed in violation of FARs, performed in a dangerous manner, or bearing even vaguely upon any aircraft engaged in air commerce. Additionally, the Respondent's current definition of air commerce is in fact fundamentally illogical. One might for instance speculate whether an aircraft endangering another aircraft which is endangering an aircraft used in air commerce is itself engaged in air commerce. One might further ask why a pilot does not need a commercial licence to operate an aircraft in air commerce. Applying the FAA's preferred definition of commerce a step further leads to

the erroneous conclusion that a car is engaged in commerce simply because it is driven on the same roads with trucks that are used in interstate commerce. The reality is that any time an aircraft is in the air it may pose a threat to another aircraft, and the premise that this fact alone is grounds for maintaining the aircraft to be engaged in air commerce conflicts with the wording and the legislative intent of the FA Act, which logically draws a distinction between air commerce and private flying.

3) The FAA maintains that the Petitioner was in violation of FAR 43.3(a) and 91.163(b) solely because he painted his aircraft and the attached control surfaces, acts which the FAA contends were not permitted by FAR 43 Appendix (A)(c)(9). There is apparently no legal precedent for this assertion, but in point of fact FAR 43 deals exclusively with what a pilot is allowed to do to his aircraft, and says nothing at all about what he is specifically not allowed to do. In light of this, the Petitioner cited FAR 43 App

(A)(c)(10) as permitting his actions, an assertion never contradicted by the FAA. Further, common experience would indicate that the owner of an aircraft is free to paint it in its entirety, and the Petitioner in fact knows several individuals who have done so openly without any action being taken by the FAA. Indeed, over the past thirty years thousands of nonlicensed individuals have not only painted but have in fact built entire aircraft which they subsequently licensed with the FAA.

4) The FAA maintains that the Petitioner was in violation of FAR 91.173(a)(1)(ii) solely by virtue of having made a single entry in the aircraft logbook of numerous maintenance items which were performed while the aircraft was down for painting, rather than making a separate dated entry of each maintenance item on the day it was performed. There is apparently no legal precedent for this assertion, and it is in fact not entirely clear from the wording of the regulation whether the required record of the "date of

completion of the work performed" refers to the date of completion of individual items or the date of completion of work done to an aircraft over the course of a down period. However, upon examining the Petitioner's aircraft logbook for the past 20 years, the Petitioner can find no instance where any of numerous licensed mechanics made two entries separated by a matter of days, a fact which indicates that either the FAA is not following precedent in this case or the Petitioner's aircraft has always had every maintenance item completed on the final day of every maintenance period, something which is in fact rarely the case.

FAA EMERGENCY ORDER OF REVOCATION

July 6, 1990

Case No. 90SW090066

The Administrator of the FAA has received a report of investigation showing the following:

1. You are the holder of Airman Certificate #265396554 with private pilot privileges.

2. You are the registered owner of Civil Aircraft N6303L, a Gulfstream AA-1A.

3. You were issued only two airman medical certificates, both third class: one dated January 18, 1984, and another dated May 11, 1990.

4. You operated Civil Aircraft N6303L on more than sixty flights in air commerce after the expiration of the medical certificate issued on January 18, 1984 and before May 11, 1990.

5. You acted as pilot in command of Civil Aircraft N6303L on more than sixty flights in air commerce from December 28, 1987 to May 10, 1990 without having accomplished within the preceding 24 calendar months of each flight a flight review administered by an appropriately rated instructor in an aircraft for which you

held an appropriate rating.

6. You hold no airman mechanic certificate issued by the FAA.

7. During the period from July 1988, to June of 1989 you painted Civil Aircraft N6303L, including aircraft control surfaces, fiberglassed the horizontal stabilizer and bondoed over wing and tail dents.

8. After painting the aircraft control surfaces as described in paragraph 7, you returned the aircraft to service without insuring that checks and adjustments of the mass balance weight of the control surfaces were performed.

9. After completing the maintenance as described in paragraph 7, you returned the aircraft to service without approval by a person authorized to make such approval.

10. You operated Civil Aircraft N6303L from January 1, 1988 to May 10, 1990 on more than sixty flights without the aircraft having an annual inspection and without it having been approved for return to service.

11. You failed to keep records of the date of

completion of maintenance performed on Civil Aircraft N6303L.

12. You did not keep required records of the current status of airworthiness directives 72-06-02, 72-07-10, 75-09-07 and 85-21-02.

By reason of the foregoing facts and circumstances, you violated the following statute and Federal Aviation Regulations:

a. Section 43.3(a), in that you performed maintenance on Civil Aircraft N6303L that you were not authorized to perform.

b. Section 43.5(a), in that you returned to service Civil Aircraft N6303L after performing maintenance without making the maintenance record entry required by Section 43.9 or Section 43.11.

c. Section 61.56(b)(1), in that you acted as pilot in command of Civil Aircraft N6303L from December 28, 1987 to May 11, 1990 on numerous flights without having accomplished within the preceding 24 calendar months of these flights, a flight review given to you by an appropriately rated instructor in an aircraft for which you are rated.

d. Section 61.3(c), in that you acted as pilot in command of Civil Aircraft N6303L on numerous flights from December 28, 1987 to May 11, 1990 without a current appropriate medical certificate in your possession.

e. Section 91.163(b), in that between July of 1988 and June of 1989 you performed maintenance on Civil Aircraft N6303L other than as prescribed in FAR Part 91 and FAR Part 43.

f. Section 91.167(a)(1), in that you operated Civil Aircraft N6303L on numerous flights after it had undergone maintenance when the aircraft had not been approved for return to service by a person authorized to do so.

g. Section 91.169(a)(1), in that you operated Civil Aircraft N6303L from January 1, 1988 to May 10, 1990 on numerous flights without the aircraft having an annual inspection and without the aircraft having been approved for return to service by a person authorized to do so.

h. Section 91.173(a)(1)(ii), in that you failed to keep a record of the date of

completion of maintenance performed on Civil Aircraft N6303L.

i. Section 91.29(a), in that you operated Civil Aircraft N6303L when it was not in an airworthy condition.

j. Section 91.173(a)(2)(v), in that you did not keep required records of the current status of airworthiness directives applicable to Civil Aircraft N6303L, 72-06-02, 72-07-10, 75-09-07, and 85-21-02, including for each the method of compliance, the airworthiness directive number, revision date, and where requiring recurrent action, the time and date when the next action was required.

k. Section 610(a)(2), of the Federal Aviation Act of 1958 in that you served in the capacity of a certificated mechanic in connection with maintenance on Civil Aircraft N6303L used in air commerce without an airman certificate authorizing you to serve in that capacity.

By reason of the foregoing, the Administrator has determined that you lack the degree of care, judgment, and responsibility required of the holder of an Airman Pilot Certificate and

that safety in air commerce and the public interest require the revocation of your Airman Pilot Certificate with Private Pilot privileges herein.

Further, the Administrator has determined that an emergency exists and that safety in air commerce and the public interest require the immediate effectiveness of this Order.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by Sections 609 and 1005(a) of the Federal Aviation Act of 1958, as amended, that:

1. Any airman Certificate, including Airman Certificate No. #265396554, now held by you, be and the same are hereby revoked.

2. Said revocation shall become effective immediately.

3. Said Airman Certificate shall be surrendered, by mail or delivery, to the undersigned at the Office of Assistant Chief Counsel, FAA, SW Region, Ft. Worth, TX 76193-0007 or any FAA Safety Inspector.

4. No application for a new Airman Certificate shall be accepted from you, nor shall any

Airman Certificate be issued to you for a period of three hundred sixty five (365) days from the date you surrender your certificates to the FAA.

Sincerely,

HAYS V. HETTINGER

Assistant Chief Counsel

Southwest Region

ORAL INITIAL DECISION AND ORDER OF THE NATIONAL TRANSPORTATION SAFETY BOARD

Docket No. SE-11223

JULY 31, 1990

JAMES B. BUSEY, ADMINISTRATOR,	)
FEDERAL AVIATION ADMINISTRATION,	)
Complainant	)
v.	)
GREGORY T. CHRISTIAN,	)
Respondent	)

JUDGE COFFMAN: For the record, this has been a case coming before the NTSB titled James B. Busey, Administrator versus Gregory T. Christian, Respondent, Case Number SE-11223, coming on for hearing under the emergency provisions on an emergency case on the 31st day of July, 1990, beginning this morning in Houston, Texas.

Present at all times for the Administrator, Mr. Donnell, assistant chief counsel from the FAA's Southwest Region. Mr. Christian has been present at all times during the courtroom representing himself after being

advised of his right to counsel, choosing to proceed and represent himself.

I don't intend to go into every single witness' testimony. I don't usually do that. I don't think it is necessary. The records speaks for itself. We have exhibits introduced, some eight exhibits on behalf of the Administrator and seven on behalf of the Respondent.

We had three witnesses testify on behalf of the Administrator. Mr. Christian took the stand on his own behalf. Ample closing and opening argument was allowed and argument on each point. So I think the record speaks for itself.

However, let me point out a couple of things, and we are here to discuss an emergency revocation of an airman's certificate with private pilot privileges. And going into that, under the FAA Act we must look at the totality of the circumstances.

We must look at the care, judgment, and responsibility required of the holder of this airman's certificate. Nothing is to be

construed during my comments to insinuate that I do not think Mr. Christian is an intelligent person.

Mr. Christian may be an aerospace engineer, and he may be extremely book smart. But I think he lacks judgment that should be required, and I think this is evident in many, many examples of his conduct of this matter.

If you accepted Mr. Christian's argument that knowledge of a subject is enough, then someone could pick up a medical book and study and go do brain surgery, and if the person lived and the operation was a success, then that person could be a neurosurgeon. That just makes absolutely no sense whatsoever.

Mr. Christian -- once he got his private pilot's certificate in October of '84, it seems that he decided to put in on the shelf and buy an airplane and from that point on totally ignore every regulation almost in the Federal Air Regulations and some major ones.

He has had no medical examination and admitted since January 18, '84. It is not the point that he is physically fit. He has had no

medical certification since January 1984.

He has had no biannual flight review. The requirements for a BFR were very specific. They were put into the regulations for everyone's sake for safety -- for pilots to go out and fly with an instructor. And I don't think every two years is too much of a burden for someone to go out and fly with an instructor and say, hey; you are doing a good job.

Or on the other hand, you can't do that maneuver correctly. You are endangering yourself and the lives of your passengers.

There is no annual inspection done on this airplane. There, again, Mr. Christian may be the smartest aerospace engineer that ever worked here in Houston, but he is not a licensed A&P mechanic. And the regulations specifically say -- and on the log book it says every major alteration or repair must be signed by a certified A&P mechanic with inspection authorization.

The regulations are there for a reason, and I think to any intelligent person such as

Mr. Christian the requirements and the need for those regulations are obvious. The airplane was not flown with an annual -- not flown with a current annual.

And a current annual would have discovered that there were seven air worthiness directives that were not complied with. Now, these air worthiness directives are not published by the manufacturer, nor are they endorsed by the FAA for a mere -- whimsical reasons.

They are put out there -- they are called air worthiness directives. That is a pretty substantial title. They must be complied with for the air worthiness of the aircraft, and none of them were complied with. A current annual would have caught this.

Mr. Christian says he was becoming concerned and uncomfortable with this not being done and especially at night. However, I noticed that in one of the entries of his log book -- his pilot log book, he stated that he practiced a dead stick landing at night.

I think from 6,500 feet or something like

that --

MR. CHRISTIAN: That was a couple of years ago.

JUDGE COFFMAN: Just be quite, Mr. Christian. I am not talking to you now, sir. It is not your time to talk. It is my time to talk.

So there is an entry and from whatever altitude it was that he attempted a dead stick landing at night, and he came up a little short.

MR. CHRISTIAN: Well, with the engine on.

JUDGE COFFMAN: Mr. Christian, I am not going to tell you again, sir. Just be quiet.

MR. CHRISTIAN: I am sorry.

JUDGE COFFMAN: So if you look at these for big items -- no medical, no annual on the aircraft, no biannual flight review, and the ADs not complied with -- along with -- I have never seen a list in the aircraft log book of entries of maintenance that was done by a nonlicensed pilot.

I don't think the phrase -- you don't need to look in the federal air regulations to

determine what preventative maintenance is. If you have any experience with automobiles or anything mechanical, I think the term preventative maintenance speaks for itself.

That is basically checking the water, checking the fluid levels, checking the air in the tires, and things like that. That is preventative maintenance. Anything else is maintenance and requires inspection and requires the work be done by a licensed A&P and by inspection authorization.

I don't think the phrase is hard to understand without even looking in the regulations. But if you do look in the regulations, it explains what preventative maintenance is.

So I think Mr. Christian shows a total absolute disregard for the rules and regulations as put forth in the federal air regulations, and he seems to think that the fact that he went out on May 11 and got his physical -- that it makes it okay.

I notice also that his STC for the aviation fuel is dated June 29 of '90, some

month and a half or so after the ramp inspection of May 10. And, again, the air worthiness directives were only complied with after he got caught and only complied with to ferry the aircraft from one airport to the other.

So I think that if you look at the totality of the circumstances, it shows an absolute blatant disregard for almost every rule and regulation that the FAA has published, especially in those four areas that are just absolutely astonishing that Mr. Christian has simply thumbed his nose at -- the ADs, the annual, the no medical, and the no biannual.

So I am going to make the following findings of fact, and these will be specific findings of fact.

Number one, that Mr. Christian is the holder of Airman Certificate #265396554 with private pilot privileges.

Finding of fact number two, that he is the registered owner of civil aircraft November 6303 Lima.

Finding number three -- and Mr. Christian admitted this -- that he was issued only two airman medical certificates, both third class: one dated January 18, 1984, and another one dated May 11, 1990.

Finding of fact number four, that he operated aircraft November 6303 Lima on more than 60 flights in air commerce after the expiration of the medical certificate issued on January 18, 1984 and before May 11, 1990.

Finding number five, that he acted as pilot in command of aircraft November 6303 Lima on more than 60 flights in air commerce from December 28, '87, to May 10, '90 without having accomplished within the preceding 24 calendar months of each flight a flight review administered by an appropriately rated instructor in an aircraft for which he held an appropriate rating.

And finding number six, that he holds no airman mechanic's certificate issued by the FAA.

Finding number seven, that during the period of July '88 to June of '89 that he

painted aircraft November 6303 Lima, including the aircraft control surfaces; he worked on and fiberglassed the horizontal stabilizer and bonded over the wing and tail dents.

Finding number eight, that after painting the aircraft control surfaces as described in the previous paragraph seven, he returned the aircraft to service without insuring that the checks and adjustments of the balance weight of the control surfaces were performed.

Finding number nine, that after completing the maintenance as described, he returned the aircraft to service without approval by a person authorized to make such approval.

And, finding number ten -- and Mr. Christian admitted this -- that he operated the aircraft November 6303 Lima from January 1, '88, to May 10, '90, on more than 60 flights without the aircraft having an annual inspection and without it having been approved for return to service.

Finding number 11, Mr. Christian failed to keep the records of the date of completion

of maintenance performed on the aircraft.

Mr. Christian admitted finding number 12 that he did not keep required records of the current status of the air worthiness directives 7206-02, 7207-10, 7509-07 and 8521-02.

The following conclusions of law are announced that by reason of the foregoing facts and circumstances and supported substantially by the record Mr. Christian violated the following sections of the Federal Air Regulations, Section 43.3(a), Section 43.3(a), Section 61.56(b)(1), Section 61.3(c), Section 91.167(a)(1), Section 91.169(a)(1), Section 91.173(a)(1)(ii), Section 91.29; and he admitted, and he did violate Section 91.173(a)(2) and Section 610(a)(2) of the Federal Aviation Act of 1958.

It will be the order of this court and the opinion of this court by reason of the foregoing Mr. Christian lacks the degree of care, judgement, and responsibility required of the holder of an airman pilot certificate with private pilot privileges.

The court determines that an emergency does exist and that safety in air commerce and the public interest require the immediate effectiveness of this order.

It is, therefore, ordered that Mr. Christian's airman certificate and any held by him are hereby revoked. This revocation is effective immediately.

JIMMY N. COFFMAN

Administrative Law Judge

NATIONAL TRANSPORTATION SAFETY BOARD

OPINION AND ORDER

NTSB Order No. EA-3193

Docket SE-11223

September 13, 1990

JAMES B. BUSEY, ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,
Complainant

v.

GREGORY T. CHRISTIAN,
Respondent

Respondent has appealed from the oral initial decision Administrative Law Judge Jimmy N. Coffman issued in this proceeding on July 31, 1990, at the conclusion of an evidentiary hearing (1). By that decision the law judge affirmed an order by the Administrator revoking, on an emergency basis, respondent's private pilot certificate for his numerous violations of the Federal Aviation Regulations ("FAR," 14 CFR Parts 43, 61, and 91) and one violation of the Federal Aviation

(1) An excerpt from the transcript containing the initial decision is attached.

Act of 1958 (the "Act"). Although we conclude, as discussed below, that one of the charges against respondent should not have been sustained, we are not persuaded that respondent has established that the revocation order should be modified to provide for a suspension of his airman certificate (2).

The July 6, 1990 Emergency Order of Revocation, which served as the complaint in this action, alleges, among other things, that:

[Items 1-12 of the FAA Emergency Order of Revocation]

This alleged conduct, according to the complaint, had resulted in violations of FAR sections 43.3(a), 43.5(a), 61.56(b)(1), 61.3(c), 91.163(b), 91.167(a)(1), 91.169(a)(1), 91.173(a)(1)(ii) and (a)(2)(v), 91.29(a) and Section 610(a)(2) of the Act (3).

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(2) The Administrator has filed a reply brief opposing the appeal.

(3) The Administrator's judgment as to how each of these provisions was violated is set forth in his order as follows:

[Items a-k of the FAA Emergency Order of Revocation]

The commission of the alleged violations, in turn, formed that basis for the Administrator's determination, upheld by the law judge, that the respondent lacks the degree of care, judgment and responsibility required of a certificate holder.

The law judge found that all of the alleged violations ,some of which respondent had admitted, had been proved. On appeal, respondent challenges the factual finding that he flew his aircraft when it was not in an airworthy condition and the legal conclusion that the flights he made in his aircraft were in "air commerce" (4). Taking the latter point first, we find no merit in respondent's view that his flights were not in air commerce because they were not made for compensation or hire. While it is true that "interstate air commerce" contemplates commercial carriage of persons or property , see 14 CFR 1.1, the term

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(4) Respondent also objects to the Administrator's resort to his emergency authority in this matter, an issue the Board is not empowered to review.

"air commerce" is broader and embraces not just commercial operations but also, inter alia, "any operation or navigation of aircraft within the limits of any Federal Airway...." Id (5). With regard to respondent's challenge to the evidence concerning the airworthiness of his aircraft, we think he has a valid objection (6).

The airworthiness of respondent's aircraft was clearly drawn in issue by the abundant evidence in the record as to the lack of proper maintenance record keeping, the failure to obtain required periodic maintenance inspections or to have required maintenance performed by a certificate mechanic, and the non-compliance with numerous airworthiness directives. However, apart from

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(5) See also Section 101 of the Act, 49 USC 1301, for identical statutory language.

(6) Although we have treated the document as an appeal brief, respondent has styled his appeal pleading a petition for reconsideration, apparently in order to urge the post-hearing admission of the entire aircraft as an exhibit in support his position that the charge of operating an unairworthy aircraft should be dropped. Our disposition of that charge moots the request to have the plane admitted into evidence.

noting several items that could have an impact on the craft's airworthiness, such as the fact that "bondo" had been used to fill some apparently minor airframe dents and that rust on some landing gear assembly nuts had been sand blasted off, and asserting that various work performed on the plane should have been done only by certified mechanics, the Administrator's expert witnesses did not testify that in their opinion the aircraft had not been in an airworthy condition during operations within the period covered by the complaint (7). Without dispositive proof on that precise question, the section 91.29(a) charge cannot be sustained, no matter how difficult respondent's disregard of various maintenance requirements made ascertainment of the aircraft's actual state of repair.

Notwithstanding the dismissal of the section 91.29(a) charge, we agree with the law

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(7) In fact, although the complaint points out that "checks and adjustments of mass balance weight of the control surfaces" was not performed after the aircraft was painted, apparently no determination was made as to whether any adjustments after the painting were necessary.

judge that the sanction of revocation should be affirmed. Respondent's violations reveal a pervasive willingness to ignore the known requirements of regulations he believes are unwarranted or unnecessary (8). Such contempt for regulatory authority clearly compels the conclusion that respondent lacks the qualifications required of a certificate holder.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and

2. The emergency order of revocation and the initial decision are reversed to the extent they find a violation of section 91.29(a), and they are affirmed in all other respects.

KOLSTAD, Chairman, COUGHLIN, Vice Chairman, LAUBER, BURNETT and HART, Members of the Board, concurred in the above opinion and order.

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(8) For example, respondent appears to have felt no obligation either to obtain a medical certificate so long as he thought himself physically fit or to enlist the services of a certificated mechanic to do maintenance he thought himself competent to perform.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 90-4828

June 6, 1991

Gregory T. Christian, Petitioner)
)
v.)
)
James B. Busey, Federal Aviation)
)
Administration, NTSB,)
)
Respondents)

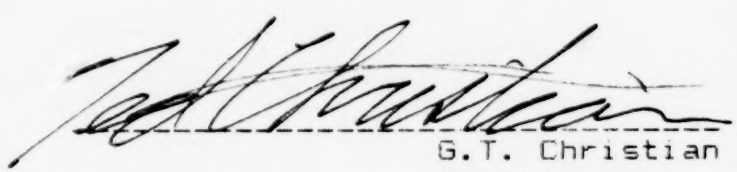
Before GARZA, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:

AFFIRMED. See Local Rule 47.6.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this eleventh day of October, 1991, forty (40) copies of the attached Petition for Writ of Certiorari, corrected as per the Clerk's directive of seventeen September, 1991, have been mailed to the Clerk of the Court for the United States Supreme Court, One First Ave. NE, Washington, D.C. 20543. three (3) copies have been mailed return receipt requested to Joyce L. Redos, Office of the Chief Counsel, AGC-250, Federal Aviation Administration, 800 Independence Ave. SW, Washington, D.C. 20591, three (3) copies have mailed return receipt requested to the Office of Administrative Law Judges, National Transportation Safety Board, Suite 505, 1951 Kidwell Dr., Vienna, Virginia 22182, and three (3) copies have been mailed return receipt requested to the Solicitor General, Department of Justice, Washington, D.C. 20530.



G.T. Christian
Petitioner